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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,	)	No. CR 16-00440 WHA
15	)	
16 Plaintiff,	)	<b>UNITED STATES' MOTION IN LIMINE NO.</b>
17	)	<b>THREE RE OPENING STATEMENTS.</b>
18 v.	)	
19	)	Trial: March 9, 2020
20 YEVGENIY ALEXANDROVICH NIKULIN,	)	Pretrial Conference: February 19, 2020
21	)	Time: 1:30 p.m.
22 Defendant.	)	Courtroom No. 12
23	)	
24	)	
25	)	
26	)	
27	)	
28	)	

29 **I. INTRODUCTION**

30 Defendant Yevgeniy Nikulin is charged in an Indictment with three counts of computer  
31 intrusion, in violation of 18 U.S.C. § 1030(a)(2)(C); two counts of intentional transmission of  
32 information, code, or command causing damage to a protected computer, in violation of 18 U.S.C. §  
33 1030(a)(5)(A); two counts of aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1); one  
34 count of trafficking in unauthorized access devices, in violation of 18 U.S.C. § 1029(a)(2); and one  
35 count of conspiracy, in violation of 18 U.S.C. § 371. Defendant has indicated that he does not intend to  
36 introduce any exhibits at trial and has only one potential witness, a computer forensic examiner. The

37 U.S. MTN. IN LIMINE RE OPENING STATEMENTS  
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United States therefore moves to preclude presentation of information in opening statements that defendant does not reasonably anticipate will be supported by evidence admitted at trial.

## II. BACKGROUND

On January 15, 2020, defendant filed a witness list indicating one potential witness, a proposed expert digital forensics examiner. ECF No. 134. Defendant also filed an exhibit list indicating that he does not presently have any exhibits that he intends to introduce at trial. ECF No. 135.

## III. ARGUMENT

It is axiomatic that counsel may not reference facts in opening statement that they do not reasonably anticipate will be introduced at trial. Nevertheless, defense counsel often include a recitation of the defendant's personal history during opening statements that is never supported by factual evidence introduced at trial. Counsel's statements may include references to the defendant's background, such as his educational history and family ties, or to other "facts" about his history.

Defendant Nikulin's exhibit and witness lists indicate that the only potential evidence he will seek to admit in this trial is expert testimony on digital forensics. Given that fact, there is no reason to expect any evidence to be admitted regarding defendant's personal history. If defense counsel are unsure by the time of opening statement whether they will introduce such evidence, then the Court should preclude them from describing the background and personal history of the defendant during opening statement.

## IV. CONCLUSION

For all of the reasons stated above, the United States respectfully requests that the Court preclude references in opening statement that defense counsel do not reasonably anticipate will be supported by evidence admitted at trial.

DATED: January 22, 2020

Respectfully submitted,

DAVID L. ANDERSON  
United States Attorney

/s/ \_\_\_\_\_  
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